Supreme Court of the United States.

DECEMBER TERM, 1868.

No. 86.

CHARLES HART SMITH,

vs.

THE WASHINGTON GAS-LIGHT COMPANY.

KENNEDY & WEBB,
Counsel for Appellee.

J. L. Pearson, Printer, corner 9th and D streets.

Supreme Court of the United States.

December Term, 1905.

No. 80.

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DECEMBER TERM, 1868.

No. 86.

CHARLES HART SMITH vs. THE WASHINGTON GAS-LIGHT CO.	On appeal from the Supreme Court of the District of Columbia.

The bill of complaint filed by Charles Hart Smith (appellant) against The Washington Gas-light Company (appellee) in this cause, charges, among other things, as follows:

"That on or about the 18th day of May, 1859, the said Gas-light Company entered into a written contract with a certain Charles Wilson; that upon the faith of said contract, and the privileges thereby secured to him, the said Wilson, at great expense and cost to himself, leased certain lots of ground in the city of Washington for a term of years commensurate with the term of said contract, and with like benefit of renewal, and erected on said lots, or some of them, a large and valuable brick building and other buildings, and placed machinery therein for the purpose of manufacturing, out and from the gas-tar accruing or to be received, under said contract, lamp-black, and pitch and felt for roofing purposes, and also pitch for ships; that said contract was assigned by said

Charles Wilson, on the 14th day of November, 1860, to the firm of H. C. Wilson & Co., composed of the said Charles Wilson and a certain Henry C. Wilson; that on the 8th day of April, 1861, the said Charles Wilson released and assigned all his interest in said contract to said Henry C. Wilson; that under said contract and assignments said gas-tar was regularly delivered to the parties thereto entitled under said contract, and was paid for by them under said contract until the 1st day of June, 1864; that on the expiration of said original term of five years the said gas company continued until the 1st of December, 1864, to deliver to said Henry C. Wilson all the gas tar deliverable under said contract, without any payment being made by him therefor until the 21st day of December, 1864, when he paid said company the sum of two hundred and fifty dollars, and took therefrom a receipt (copy of receipt marked Exh. B., filed, see p. 5, R.) for said payment; that on the day of the date of said receipt the said Wilson exhibited the said receipt to complainant; that complainant, relying on the terms of said receipt, and on the fact that said company were then, and had been, delivering said gas-tar to said Wilson uninterruptedly from the 1st day of June, 1864, then and there purchased from said Wilson, for the sum of two thousand dollars, all his interest in said contract; and on said day the said Wilson, by his writing indorsed thereon, duly assigned said contract to complainant; and that complainant hath ever since to this time been receiving, *as such assignee*, all the gas-tar not wanted for the use of said company, except during a period of fourteen days, during which the said company refused to deliver said gas-tar to complainant, whereby he sustained great loss and damage."

The bill further charges, among other things,—

"That the said Gas-light Company now threaten to deny and repudiate his (complainant's) right, as *such assignee*, longer to receive, after the 27th day of April, 1865, said gas-tar; and they are about to sell and dispose of all said gas-tar for the residue of the unexpired five years, computing from the 1st day of June, 1864, to some person or persons unknown to complainant, and have notified him (complainant) that they will deliver no more tar to him after the said 27th of April, 1865."

The bill prays the court to grant, among other things, "the United States writ of injunction enjoining and prohibiting the said Gas-light Company from selling or otherwise disposing of the gas-tar made by said company, except to complainant, as allowed in the written contract made on the 18th of May, 1859," &c., and also prays for "such other and further relief as may be right and proper."—(See pp. 1, 2, and 3, R.)

In the answer (pp. 6, 7, and 8, R.) filed by said Gas-light Company to said bill of complaint, it is admitted that the contract of May 18, 1859, was entered into by said company with said Charles Wilson, as charged in said bill, and that "Exhibit A," filed with said bill, (p. 4, R.,) is a true copy of said contract. It is also admitted that the gas-tar manufactured by said company was regularly delivered until the 1st day of June, 1864, in accordance with the terms of said contract. But it is denied that said company continued to deliver said gas-tar, *under said contract of May* 18, ~~1861~~ 1859, to Henry C. Wilson, until the 1st day of December, 1864, or at any time after the 1st day of June, 1864; and contrary thereto, it is averred in said answer that said contract of May 18, 1859, expired on the 1st day of June, 1864, and was never renewed by said company; that at or before the expiration of said contract the said Henry C. Wilson proposed to purchase said gas-tar from said company after the 1st day of June, 1864, under a new contract altogether different from that of May 18, 1859; that his said proposition was accepted by said company, and that all the gas-tar delivered to him after the 1st day of June, 1864, was delivered under said new contract; that Charles Wilson, who obtained from the cashier of said company the receipt of December 21, 1864, for $250, well knew, at the time of obtaining said receipt, that the contract of May 18, 1859, had expired, and that it had not been renewed, and was well aware of the new contract subsisting, at the date of said receipt,

between said company and said Henry C. Wilson for the sale and purchase of said gas-tar; that the said cashier was not the proper officer to receive payments for gas-tar, and to give receipts therefor, and was ignorant of the new contract then subsisting between said company and said Henry C. Wilson, and that the said Charles Wilson took advantage of his (the said cashier's) ignorance of said contract, and entrapped him into signing said receipt with a view of perpetrating a fraud on said company.

The answer denies that the pretended assignment from Henry C. Wilson to the complainant, of the contract of May 18, 1859, could have been made in good faith, and avers that at the date of said pretended assignment the complainant knew that said contract had expired, and that it had not been renewed; and also avers that it is untrue that the said complainant, after the 21st of December, 1864, or at any time, received all or any of the gas-tar manufactured by said company under the contract of May 18, 1859, and as the *assignee of the said Henry C. Wilson;* and further avers, that said complainant received said gas-tar, so far as he received it at all, under another and an entirely different contract made by him with the president of said company, and under which he (the complainant) was to pay $50 per week for said tar. The answer admits that the said company denies and repudiates the right of complainant, as *the assignee of H. C. Wilson*, to receive said gas-tar, or any part thereof; and further admits, that the complainant had been notified that said company intended to terminate, or end, its contract with him; but denies that such notice was given him *as assignee of the contract of May* 18, 1859.

The cause was heard in the court below at a special term, and a decree dismissing the bill was passed; afterwards, upon appeal, it was again heard by the court in general term, and the decree of dismissal affirmed. From the last decree an appeal was taken to this court.

I.

It being admitted by the answer that the contract of the 18th of May, 1859, on which the appellant relies, was duly entered into by the said Gas-light Company and the said Charles Wilson, the first question that arises is, "Was said company under any obligation to *renew* said contract? If it was, such obligation must have been created by the original contract, either expressly or by necessary implication; and, therefore, for the proper solution of the question under consideration, we must look at the language of that contract, and interpret it fairly. The only words used in the contract of the 18th of May, 1859, on the part of said company, that have any reference to a renewal of the contract, are these: "The said company further agrees, that *in case of its refusal to renew this contract* at the expiration of said five years, with the said Wilson, his administrators, heirs, or assigns, for the same amount per year, and upon the same conditions as herein specified, then and in that case to *return him or them the last year's payment of five hundred dollars* herein specified." And the only words used therein on the part of Charles Wilson, the other party to the contract, that have any reference to a renewal of the contract, are these: "And the said Wilson further rgrees, that he will *renew this contract* with said company for five years from the 1st day of June, 1864, should said company so desire, at the same amount per year, and upon the same conditions as hereinbefore specified."—(p. 4, R.)

As this language is, in every word, perfectly simple, and free from all ambiguity, there is, and there can be, no difficulty in rightly apprehending its meaning. The time of the contract, and the circumstances under which it was made, rendered it, as will be more particularly shown hereinafter, a wise precaution on the part of the company to secure for itself the right to renew the contract, at its expiration, for another five years, if the considerations which

induced it to make the contract should still continue to be operative at its expiration; and to secure this right to renew *the contract*, or not, at its own option, the company was willing to pay, and therefore agreed to pay, to the other contracting party, the sum of five hundred dollars if it should fail to renew it. This, it is submitted, is the full extent of the obligation incurred by the company, both by the letter and spirit of its contract; and it follows that the company was under no absolute obligation to renew the contract of May 18, 1859.

II.

But, however apparent it may be that said company was not *bound* to renew said contract, it is equally apparent that it had the *right* to renew it, if at its expiration, its renewal was believed by the company to be for its own advantage; and it may be important, therefore, to inquire whether it *was* for the advantage of the company to renew said contract? If it *was*, then, irrespective of the evidence, the probability would be that the company did renew the contract; on the other hand, if its renewal was *not* for the advantage of the company, the probability, irrespective of the evidence, would be, that it did *not* renew the contract.

Properly to solve this question, it is necessary to consider the circumstances under which the contract of May 18, 1859, was made, and the motives that induced the company to make it, and to ascertain whether or no those circumstances and those motives were still existent and operative at the expiration of the contract.

Charles Wilson, the person with whom the contract of May 18, 1859, was made, and who was examined as a witness in behalf of the complainant, testified in his examination-in-chief as follows:

"Just before the contract in this case was made, Mr. Brown, the secretary of the company, wrote me a note inquiring what had become of H. C. Wilson, and indi-

cating that a contract could now be made for the gas-tar. This contract (*i. e.*, contract of May 18, 1859) was then entered into, and during the negotiation Mr. Brown stated to me *that the principal object was to get rid of the tar. That they wanted a responsible person to take it away, because it was a nuisance and they were held responsible for it, and threatened to be indicted; and the amount to be received was of less consideration than the certainty of it being taken away.*"—(p. 11, R.)

This testimony of the complainant's witness very clearly explains why it was that in 1859 the company was not only willing, but anxious, to contract for the sale of its gas-tar for so long a period as five years, at so low a price as $500 a year; and explains with equal clearness *why* it was important to said company to secure the *right* to renew, at its option, the contract which it made on the 18th day of May, 1859. This testimony of Wilson unmistakably shows that there was little or no demand for gas-tar in the Washington City market in 1859; that the gas-tar was inconveniently, and unprofitably, accumulating on the hands of the company; that it had, in fact, become "a nuisance," for which the company was held responsible, and on account of which it was "threatened to be indicted." And the contract of May 18th, 1859, itself, confirms the truth of Brown's statement to Wilson, for, among other things, the contract required and bound Wilson "to take all the tar away, that the tar-well may be kept pumped out, so as to leave it always capable of holding all the gas-tar which may flow into it, and never permit the said tar to discharge into the Potomac river, or elsewhere."—(p. 4, R.)

It is not surprising, therefore, "that the amount to be received for the gas-tar was of less consideration" to the company, in 1859, "than the certainty of its being taken away." Indeed, under the circumstances which then existed, it must be conceded that the company was wise, rather than liberal, in entering into a contract which secured it $500 a year for a commodity which had been

previously of little or no value to it, and which, at the same time, relieved it from the fear of the "indictment," with which it had been "threatened;" and it is submitted that the company was equally wise in securing the right to renew, at its own option, for another five years, a contract which, at the time of making it, appeared to be so favorable to its interest. But it is manifest, from the evidence in the cause, that gas-tar, although a drug in 1859, soon, thereafter, became a very saleable article in the Washington City market. Civil war arose in the land,—thousands and tens of thousands of soldiers were called to Washington in the prosecution of that war, and for the defence of the capital of the nation,—tenements, of one sort or another, and almost without number, had to be provided and erected for the accommodation of these soldiers. For the roofing of these tenements, gas-tar was greatly needed, and freely used; and thus the article, as a saleable commodity, suddenly grew into importance and value. This is apparent from the evidence in the cause.

Charles Wilson, with whom the contract of May 18, 1859, was made, assigned his interest in the contract to H. C. Wilson & Co., on the 14th of November, 1859.—(p. 5, R.) The firm of H. C. Wilson & Co. (composed of said Charles Wilson and Henry C. Wilson) was organiszed on or about the said 14th day of November, 1859, and continued to exist, and do business, until the 8th of April, 1861, when it assigned said contract, of May 18th, 1859, to H. C. Wilson.—(p. 5, R.) The firm of H. C. Wilson & Co. commenced business *without any capital*, for Charles Wilson testifies that "*the work* (of the firm of H. C. Wilson & Co.) *had all been done upon credit and borrowed money, neither of us having had any capital.*"—(p. 11, R.) The firm of H. C. Wilson & Co. existed but a short time, less than 18 months, and yet this same Charles Wilson (complainant's witness) further testifies that on the dissolution of the firm of H. C. Wilson & Co., "H. C. Wilson

assumed its debts, and paid the witness $5,000 for his interest in its business."—(p. 11, R.) If the interest of the witness was worth $5,000, it is fair to presume that the interest of H. C. Wilson, the other partner, was worth quite as much; and if so, it follows that H. C. Wilson & Co., who commenced business "without any capital," made and saved a net profit of $10,000 in less than 18 months, from the gas-tar received by said firm from the defendant, under the contract of May 18th, 1859; and this is, of itself, pretty good evidence that, except for the contract of May 18th, 1859, the defendant would have received much more than the rate of $500 a year for the gas-tar sold to H. C. Wilson & Co., during the continuance of that firm. But this is far from being either the only, or the strongest, evidence on this point. The complainant himself testifies that from the 24th of December, 1864, to the 24th of January, 1865, the market value of gas-tar, independently of special contract, was four cents a gallon, while, under the contract of May 18th, 1859, it was only *one* cent per gallon.—(See his answer to 10th cross-interrogatory, p. 19, R.)

On his cross-examination, the following interrogatories[8] were addressed to the complainant, viz:

8*th cross-interrogatory.*—"State now, if you please, if you did not make a new contract with the Gas Company for tar, on the 26th of January, 1865; and if so, what were its terms, and whether, from that day to this, you have not been receiving tar from said company, in accordance with the terms of said last-mentioned contract?"

Answer.—"Mr. Bartol, the president of the company, offered me the tar for $50 per week. As I was obliged to have the tar to fill my contracts, I accepted that offer, considering it was the best trade I could make with them. He reserved the right to terminate that arrangement, by giving me a month's notice, which notice was contained in a letter which I now present, marked Exhibit D."

In further answer to said cross-interrogatory, witness added: "All the tar I have received, from the 24th Jan-

uary to the present time, has been under that arrangement, and to be paid for by me at the rate of $50 per week."

Under the contract of May 18th, 1859, the cost of the gas-tar was less than $10 a week; and yet we here show, by his own testimony, that the complainant was willing to pay, and actually contracted to pay, $50 a week for it from and after January, 1865. But this testimony of the complainant invites a further word of comment, for it touches and blurs the candor and veracity of the complainant, and shakes his credibility as a witness. In his bill of complaint, after stating that the contract of May 18th, 1859, was formally assigned to him by H. C. Wilson, on the 21st of December, 1864, the complainant further states that he "hath *ever since*, to this time, (April 4th, 1865, date of filing his bill,) been receiving, *as such assignee*, all the gas-tar not wanted for the use of said company, except during a period of fourteen days," &c.—(p. 2, R.) While his testimony, as a witness, in his own cause, and from which the above extracts have been made, shows that, "from January 24th to May 5th, 1865," he did not receive said gas-tar *as the assignee of H. C. Wilson*, but that he did receive it by virtue of a contract made directly between himself and the president of the said Gas-light Company, in the month of January, 1865.

As additional evidence bearing on the inquiry *now under consideration*, it seems that H. C. Wilson, the successor of H. C. Wilson & Co., boasted in a conversation which he held sometime in the month of November, 1864, in the city of Philadelphia, with one Samuel L. Brick, that he, H. C. Wilson, had made $40,000 under his gas-tar contract with said company. The witness (Samuel L. Brick) thinks Wilson said that "he had made $40,000 in the last year;" but is "not certain whether he said one year or two years."—(p. 40, R.) If Wilson's boast was founded on truth, it would seem to indicate that gas-tar, out of

which he made $40,000 "in one year or two years," was worth something more than $500 a year during the time he held the contract of May 18, 1859.

Joseph F. Brown, secretary and treasurer of the Washington Gas-light Company, and a witness in its behalf, testifies that on the 30th and 31st of May, 1864, he was offered by "the Warren Roofing Company" sixty-five cents per ton of coal carbonized for all the coal-tar that might be made by the Washington Gas-light Company from June 1, 1864, to June 1, 1865; and that on the said 31st of May, 1865, he received a precisely similar offer from the said H. C. Wilson.—(pp. 27, 28, R.) And the testimony of this witness further shows, that "at the rate of sixty-five cents per ton of coal carbonized," the gas-tar made by said company from the 1st of June to the 1st of December, 1864, a period of only six months, amounted to the sum of $5,164.90 (p. 31, R.), instead of only $250, which would have been the price of it had it been sold under the contract of May 18, 1859. It would be easy to cite other evidence to the same point, but *surely* that already cited is sufficient to show beyond all doubt or question *that it was not for the interest of the defendant to renew the contract of May* 18, 1859.

III.

But it is not enough for us to *show, as we think we have clearly* shown from the evidence, *that the defendant was under no obligation to renew the contract of May* 18, 1859, and *that it was not for the interest of the defendant to renew it;* for if, regardless of its own interest and faithless to its stockholders, the Washington Gas-light Company did, in fact, renew said contract, it is unquestionably bound by such renewal. And the material question in the case remains, therefore, yet to be considered, viz: *Did the defendant renew the contract of May* 18, 1859? In pursuing this inquiry, it may be well, as a preliminary step, to see to what extent the Washington Gas-light Company was endeavored

with capacity to contract, and in what way it was required by its charter to exert and manifest the exercise of that capacity.

The first section of its charter (p. 57, R.) authorizes said company, among other things—

"To make and have a common seal, and the same to break, alter, and renew at pleasure; to ordain and establish such by-laws, ordinances, and regulations, and generally to do every act and thing necessary to carry into effect this act, or to promote the objects and designs of this corporation."

And pursuant to the authority thus conferred upon it, said company, on the 19th of October, 1849, ordained and established a series of by-laws for its government, and the government of its officers.—(p. 62, R.) The third of these by-laws enacts, among other things, that—

"The president (of the company) shall have power to enter into any contract that he may think for the interest of this company, but no contract shall be binding upon the company until it has been approved by the board of directors, is reduced to writing, signed by the president, and person or persons with whom it is made, countersigned by the secretary, and the seal of the company thereto affixed."

Thus it will be seen that the president of the company is the *only* person authorized by its by-laws to enter into any contract in behalf of the company, and that even *his* contracts are not binding upon the company until they have "been approved by the board of directors, reduced to writing, signed by the president, and person or persons with whom they are made, countersigned by the secretory, and the seal of the company thereto affixed." The contract of May 18, 1859, was executed in conformity with the requirements of this by-law. It is not pretended by the complainant, or by any one in his behalf, that the contract of May 18, 1859, was *renewed* in like conformity with the requirements of this by-law. Nor is it pretended by the complainant, or by any one in his behalf, that

there was an *express* contract executed *in any way*, or by *any person*, in renewal of the contract of May 18, 1859. On the contrary, Henry C. Wilson, (complainant's witness,) who held the contract of May 18, 1859, previous to and at the time of its expiration, testifies, in answer to seventh cross-interrogatory, that—

"There never was a formal renewal (of said contract), because I considered it virtually renewed by its own terms, and because I had received no notice to the contrary."—(p. 22, R.)

By the eighth cross-interrogatory addressed to him, this witness (H. C. Wilson) was asked as follows:

"Did you ever say anything to the president, or any other officer of the company, about renewing the contract?"

His answer was:

"To the best of my recollection, *no*."—(p. 22, R.)

It is not averred in *express terms* in his bill of complaint, or elsewhere by the complainant, that there was *ever* an *implied renewal* of the contract of May 18, 1859. He *intimates*, rather than *says*, that there *was*, by using in his bill of complaint this language, viz:

"That, on the expiration of said original term of five years, the Gas Company continued, until the 1st of December, 1864, to deliver to said Henry C. Wilson *all the gas-tar deliverable by them*, as aforesaid, *under said contract*, without any payment being made by him therefor until the 21st day of December, 1864," &c.—(pp. 1, 2, R.)

If the purpose of this language had been to *insinuate* as *fact* that which the complainant, on his oath, could not venture expressly to state to be a fact, the language could scarcely have been more aptly chosen for the accomplishment of such purpose. It is ambiguous, and "palters in a double sense." Under its contract of May 18, 1859, the company was bound to deliver to Wilson, during the continuance of the contract, "all the gas-tar it made in Washington City, *excepting only* such quantities as it might

from time to time reserve "for its own uses in coating its own property within said city."—(p. 4, R.) And if, by this averment, the complainant simply means that all the gas-tar made by said company from July 1st to December 1st, 1864, excepting only so much thereof as it reserved "for its own uses in coating its own property within said city," was delivered to Wilson, then the averment is true, and is as harmless as it is true; but if he meant to insinuate by the averment, as probably he did, that after the 1st of July and until the 1st of December, 1864, the company continued to deliver its gas-tar to said Wilson for *the same price* ($500 a year) at which it had previously delivered it to him, then it will appear manifestly from the evidence in the cause that the averment is wholly untrue. The first scrap of evidence on which the complainant seemingly relies in support of his pretension that there was an implied renewal of the contract of May 18, 1859, is a receipt (p. 17, R.) in the following words and figures:

"Received, Washington, D. C., June 2, 1864, of H. C. Wilson, two hundred and fifty dollars in full for all the tar made at our works for six months, due and payable this date. (Signed) J. F. BROWN, *Sec. in charge.*"

The next is another receipt, (p. 5, R.,) as follows:

"Washington, D. C., Dec'r 21, 1864. Received of H. C. Wilson the sum of two hundred and fifty dollars, being for all the tar made at the Washington Gas-light Company's works for six months from June 1st to December 1st, 1864, as per contract. (Signed) A. G. HALL, *Cashier W. G. Lt. Co.*"

The $250 paid by Wilson on the 2d of June, 1864, as evidenced by the receipt of that date, was in payment for the gas-tar furnished him during the last six months of the contract of May 18, 1859; hence it was argued by complainant's counsel in the court below, and perhaps it will be again argued, that, inasmuch as Wilson was to receive from the company $500, if it refused to renew the

contract of the 18th of May, 1859, it follows that the contract *must have been renewed;* else, instead of being indebted to the company in the sum of $250, on the 2d of June, 1864, Wilson would have been entitled to receive from it, at that date, the sum of $500. It might be a sufficient answer to this argument to say that it rests, as we think, upon a misapprehension of the terms of the contract of May 18th, 1859. The language of the contract relied on in support of the argument, is as follows:

"The said company further agrees that in case of its refusal to renew the contract at the expiration of said five years, with the said Wilson, his administrators, heirs, or assigns, for the same amount per year, and upon the same conditions as herein specified, then, and in that case, to *return* to him or them *the last year's payment of* $500 *herein specified.*" (p. 4, R.)

The true interpretation of this language is, we submit, that it did not authorize Wilson to withhold "the last year's payment of $500," but only gave him a claim to have it *returned* to him by the company after he had paid it, in the event of a refusal by the company to renew said contract. It is difficult to see in what way "the last year's payment of $500" could be *returned* to Wilson, unless he had first paid it to the company. But a more conclusive answer to the argument is, perhaps, to be found in the fact that "the last year's payment of $500" was, as will be presently more distinctly and fully shown from the evidence, returned to Wilson, *with his own consent and under his previous agreement*, in the form of a credit of $500 given in his account with the company. With respect to the receipt of December 21st, 1864, above recited, it has been argued in behalf of complainant, that, inasmuch as by its very terms, said receipt shows the sum of $250 mentioned in it to have been paid for the gas-tar furnished Wilson, "for six months from June 1st to December 1st, 1864, as per contract," it follows, necessarily, that the contract of May 18th, 1859, which expired on the 1st of

June, 1864, must have been renewed by said company. It is admitted that such would be a fair inference from the receipt, if the receipt itself had been fairly, and *bona fide*, obtained from the proper officer of the company, and had been given by him with full knowledge on his part of the contract relation between Wilson and the company at the date of the receipt. But it was not so obtained, and it was not so given. The receipt was signed by A. G. Hall, as cashier of the company. He is a witness in the cause. On his examination-in-chief the receipt of December 21st, 1864, was shown to him, and he has testified respecting it, as follows:

"The signature to said receipt is mine. The body of the receipt is in the hand-writing of Charles Wilson. I saw him write it in the office of the Gas-light Company. I was backward and forward, from the window to the counter, while he was writing it. I did not examine the receipt particularly; I only noticed the amount. * * * * *I don't recollect ever having receipted for the tar before. I know nothing about the terms of the contract with Mr. Wilson. I only knew that Mr. Wilson got the tar.*"—(p. 23, R.)

By the light of this testimony, and the testimony itself is wholly uncontradicted and unimpeached, it is manifest that Hall, the cashier of the company, was entrapped by Wilson, and made to sign a receipt which he had no right to sign, to receive money which it was not his duty to receive, and to impliedly recognize the continuance of a contract which had expired more than six months before, and concerning which he absolutely knew nothing at all. And yet *it has been argued, and perhaps will be again*, that this receipt, signed, it is true, by an officer of the company, but not given in the discharge of his duty, or within the scope of his agency, and obtained from him, as it was, by fraud, is to be regarded as evidence that the company had previously renewed, or else by virtue of said receipt it did thereby renew the contract of May 18th, 1859; but the contrary is too plain for argument. These two receipts, dated, respectively, June 2d and December 21st,

1864, together with certain representations made to him, as he says, by H. C. Wilson, constitute the sum of the evidence, so far *as we know*, upon which the complainant relies to show that the contract of May 18th, 1859, was renewed by the defendant. He has testified in this cause, and in his own behalf, as follow:

"H. C. Wilson had a contract with the 'Washington Gas-light Company' for the purchase of gas-tar. This contract I purchased of him, and also purchased his buildings and machinery, and unexpired lease of the land on which the buildings were situated, all for the sum of $14,500. This purchase was made on the 20th of *November*, 1864, and I took possession on the 1st of December following."—(p. 12, R.)

Again, he testified as follows:

"I bought the contract and lease in good faith, on the *strength of representations made by him*, (H. C. Wilson,) and a receipt which he showed me from the Gas Company. There were two distinct transactions. The tar contract and buildings I contracted for and purchased *upon my faith in representations made by Mr. Wilson* that the contract was subsisting, and although I then took possession, this contract of sale and purchase was not to be consummated until he showed me the evidence that the tar contract was subsisting. In the meantime I went on working up the material on hand, when he showed me a *receipt*, a copy of which is filed in the case, marked *Exhibit B*, to the bill, *upon which the contracts of sale and purchase were consummated.*"—(pp. 14, 15, R.)

This evidence was given in his examination-in-chief. On his cross-examination he testified that—

"The contract for purchase from Wilson was made here in Washington on or about the 24th of November, 1864, and *I was present in person.* The conversation was closed on that day at Mr. Wilson's house, on K street, west of the Circle. The purchase money was to be paid $2,000 down, the balance in notes, which I gave him, payable in 6, 12, 24, and 30 months. The whole purchase was settled to the satisfaction of myself and Mr. Wilson on the *first day of December following*, and the notes were passed on *that day.* During our negotiation, and before

our bargain on 24th November was made, I *had seen the contract* (of May 18th, 1859,) with the Gas Company, *and read it, and understood it.* I did *not call upon the Gas Company* at any time pending these negotiations, to *inquire* whether the contract, a copy of which is filed, marked Exhibit A, (contract of May 18th, 1859,) had been renewed, or was then existing as a subsisting contract."—(pp. 16 and 17, R.)

This testimony of the complainant is extracted from the record for two purposes; first, to show his inconsistency and self-contradiction, in this: It will be seen from his testimony, on his cross-examination, that his whole purchase from Wilson "was settled, and that his notes were passed on the *first* day of *December*, 1864," and as he had previously taken possession of the purchased property, it would seem clear to any ordinary mind "that the contracts of sale and purchase were consummated" on the *first* day of *December*, 1864; yet, according to his testimony on his examination-in-chief, they were not "consummated" until Wilson showed him A. G. Hall's receipt, dated *December* 21*st*, 1864. The second purpose for which this testimony of the complainant is extracted from the record is to show that if he was deceived by Wilson's representations in relation to the contract of May 18th, 1859, he must have been most willing to be deceived; for he had seen that contract, had read it, and he understood it, and he knew, therefore, that it had expired, and he must, we think, have also known that *it had not been renewed;* for we cannot, upon any other rational hypothesis, account for his failure to inquire of the Gas Company, or some of its officers, in relation to the expired contract, before investing his money in its purchase. Still, as he has testified that he relied upon Wilson's representations, it may be well to see, by the light of the evidence in the cause, whether Wilson made to him any *misrepresentations.*

It is averred, in the defendant's answer to the bill, and it will hereafter be clearly shown from the evidence in

the case, that, after the first day of June, 1864, and until the first day of December, 1864, H. C. Wilson did not receive any gas-tar under the contract of May 18th, 1859, but that he did receive it under a new arrangement, or agreement, between himself and the defendant. On the 31st of May, 1864, he proposed to the company, as will be more fully shown hereafter, to pay for the gas-tar delivered to him after the first day of June, 1864, at the rate of "65 cents per ton of coal carbonized," and his offer was accepted; but no formal contract, based upon said accepted offer, was executed between him and the company, though, doubtless, it was intended, and expected, by them both, that such a contract should, and would, be executed between them, and in the manner required by the by-laws of the company. The evidence shows that, in November, 1864, at the time of the negotiation between complainant and H. C. Wilson for the purchase and sale of the latter's gas-tar contract, Wilson was, and that he had been, since June 1st, 1864, receiving gas-tar from the defendant under the arrangement, or informal contract, based upon his accepted offer of May 31st, 1864; and the inference is both strong and clear that any representations made by Wilson to the complainant respecting the former's contract with the defendant, had, and must have had, reference to the informal contract then subsisting, and that they had no reference whatever to the contract of May 18, 1859, which had fully expired on the 1st of June, 1864. This inference is fully sustained by the evidence in the cause.

When testifying as a witness, the complainant, in answer to the first cross-interrogatory put to him, said as follows:

"I was anxious to get Mr. Wilson out of the business, for he was interfering with my trade in Baltimore very much, and therefore hurried him up to close the trade, before he was really *quite ready to do so;* and though he deeded the property to me on the day mentioned, (De-

cember 1st, 1864,) and I passed my notes, he gave me a *guaranty in writing* that the *contract was in force*, and *should be assigned to me*, as soon as he could have a settlement with the company. This guaranty was given up to him by me on the day on which he assigned the tar contract to me, which was December 21st."—(p. 17, R.)

According to this testimony, Wilson was not "quite ready" to *assign* the contract, which he agreed to sell on the 20th of November, and for which he got paid on the first of December, 1864. Why was he not "quite ready" to *assign* the contract on the 1st of December, 1864? Evidently because the contract had not then been formally prepared and formally executed by the Gas Company in accordance with the requirements of its by-laws. This inactivity on the part of Wilson to make a satisfactory assignment of his contract on the first of December, 1864, was a difficulty which had to be met and removed, before his sale to the complainant could be finally concluded to their mutual satisfaction. How was it met and removed? Why, in the simplest and most natural manner. The complainant required, and Wilson gave, a *written guaranty* that he would, thereafter, duly assign the contract to the complainant. But when was this assignment to be made? The complainant has testified that Wilson was to make it "as soon as he could have a settlement with the company." But we submit that the complainant's testimony on this point would, doubtless, have been *more candid*, and *equally true*, if he had frankly testified that Wilson was to make the assignment as soon as the defendant should duly execute and deliver to him the contract to be assigned. If, as has been inferred, Wilson's guaranty related to the informal contract subsisting between himself and the defendant at the date of guaranty, we can readily see that it was a wise precaution on the part of the complainant to require, and only just on the part of Wilson to give, the guaranty. But if, as the complainant pretends, it related to an assignment of the

contract of May 18, 1859, then, we ask, of what possible use was the guaranty? The paper setting out and containing thecontract of May 18, 1859, was in the possession of Wilson, and could have been assigned by him just as well on the *first* day of *December*, as on the *twenty-first* or any other day of *December*, 1864. If the complainant had wanted an assignment of the contract of May 18, 1859, he, doubtless, would have demanded and received it before taking possession of the property delivered and paid for in money and notes, amounting to $14,500, on the 1st of December, 1864. If there was any vitality then remaining in the contract of May 18, 1859; if it was of any possible value to the complainant; if for any purpose, whatever, he had purchased it, and desired to possess it, he, like any other man of ordinary intelligence, would, unquestionably, have insisted on its assignment before paying his money for it.

Under the impression that the guaranty referred to by complainant would, if produced, show upon its face that it had no relation to the contract of May 18, 1859, an effort was unsuccessfully made, in behalf of the defendant, to get it in evidence. The complainant testified that he had "given up the guaranty" to Wilson on the 21st of December, 1864, (p. 17, R.,) and Wilson testified that he had "*mislaid* it," and could not find it (p. 21, R.) We greatly question whether it ever occurred to any one that the "mislaid" guaranty had, or that it could be made to have, any relation to the contract of May 18, 1859, until after Charles Wilson had inveigled A. G. Hall, the defendant's cashier, into signing the receipt of December 21, 1864, for "$250 in full for all the tar made at our works for six months, due and payable at this date." On the contrary, there is evidence in the case to show that, prior to the 21st of December, 1864, both the complainant and H. C. Wilson alike understood the guaranty as relating only to the *informal contract*, based upon Wilson's accepted offer of May 31, 1864.

Owen O'Hare, formerly, and for fifteen years, the superintendent of the Washington City Gas-light Company, testifies as follows:

He was asked, among other things, on his examination-in-chief, if he had ever seen the complainant and Henry C. Wilson together at the works of said company? He answered as follows:

"I did. They were there sometimes separately and sometimes together."—(p. 44, R.)

He was then asked if he could fix the date at which they were at the works together? He answered:

"About the middle of August last, (August, 1864,) as near as I can recollect. We were building an extension to the works, and from the progress made in the work I should judge it was about the time I have mentioned."

He was further asked to state, as nearly as he could, what passed at the time he saw the complainant and H. C. Wilson together at the works of the said company. He answered as follows:

"*Mr. Wilson asked me the amount of coal we had carbonized the previous month.* I told him I could not tell at that time; if he would call at the Tenth-street office, any of the clerks would give it to him, if I was not there. This is the only thing that I know about it."—(p. 44, R.)

To fully appreciate the importance of this testimony, it must be remembered that after June 1st, 1864, H. C. Wilson was, under his accepted offer of May 31, 1864, to pay for the gas-tar furnished him by the defendant "*at the rate of sixty-five cents per ton of coal carbonized*," hence his inquiry of the witness, O'Hare, *in the presence of the complainant*, respecting "the amount of coal carbonized" during the month of July, 1864. If the contract of May 18, 1859, had been then in force, Wilson would have had no interest in knowing, and would scarcely have taken the trouble of going, in company with the complainant, to the defendant's works to inquire "what amount of coal had been carbonized in the month of July," or in any other

month, for whether the "amount" was large or small, was of little importance to him, as, under the contract of May 18, 1859, he was required to pay, and was only required to pay, $500 a year for the gas-tar furnished him, whether the quantity furnished was large or small.

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Joseph F. Brown, the secretary of the Washington Gas-light Company, and a witness in its behalf, was, on his examination-in-chief, shown the copy of the contract of May 18, 1859, filed with the bill of complaint, and marked Exhibit A, and was asked to say whether Charles Wilson, or any one claiming to be an assignee of Charles Wilson, ever applied to said company for a renewal of said contract, at any time before the period limited by the term thereof for its expiration? He answered as follows:

"No one ever applied to the company, specifically, for a renewal of the contract. Henry C. Wilson was informed by me, as far back as the month of February, 1864, that under no circumstances would that contract be renewed. I so informed him by direction of Mr. Riggs, the president of the company, and a majority of the board of directors. I was directed by the president to write letters to various parties throughout the country who were engaged in the tar business, asking that they should submit propositions for the purchase of this tar, after the expiration of Mr. Wilson's contract, which would expire on the 1st day of June, 1864. In obedience to that order I wrote the letters to all the persons that I could learn were engaged in the business, among others, to Mr. C. Hart Smith, of Baltimore, the complainant in this cause, whose card I had received from the engineer of the Baltimore Gas-light Company. I wrote to Mr. Smith more than once, being anxious that he should put in a bid, as he resided in Baltimore, so near to Washington. These letters were written either in April or early in May, certainly before the expiration of Wilson's contract, a copy of which is filed in this case."—(p. 26, R.)

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To fully appreciate the importance of this testimony, it must be remembered that after June 1st, 1864, H. C. Wilson was, under his accepted offer of May 31, 1864, to pay for the gas-tar furnished him by the defendant "*at the rate of sixty-five cents per ton of coal carbonized*," hence his inquiry of the witness, O'Hare, *in the presence of the complainant*, respecting "the amount of coal carbonized" during the month of July, 1864. If the contract of May 18, 1859, had been then in force, Wilson would have had no interest in knowing, and would scarcely have taken the trouble of going, in company with the complainant, to the defendant's works to inquire "what amount of coal had been carbonized in the month of July," or in any other

month, for whether the "amount" was large or small, was of little importance to him, as, under the contract of May 18, 1859, he was required to pay, and was only required to pay, $500 a year for the gas-tar furnished him, whether the quantity furnished was large or small.

Such is the evidence relied upon to show that the contract of May 18, 1859, was renewed. It must be seen to be utterly insufficient. That it was not renewed, ~~amply~~ clearly appears from the proof.

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The witness was further asked as follows:

"State, if you please, and fully, what Mr. H. C. Wilson did and said after you gave him the notification."

He answered as follows:

"He said then, and often in subsequent conversations, that he did not ask or expect the contract to be renewed, as the tar was now, and had been for years, worth much more to him than $500 per year; but that he must have the tar, and as he had made a good thing out of the contract, he could afford to pay as much as any one else, and asked me to use my influence with the board of directors to see that he still got the tar. This was the substance of a dozen conversations, or more, wherever we met, frequently in my office, frequently in the street, and at the Council Chamber, of which he was a member—I being an Alderman."—(p. 28, R.)

Witness was asked if he had received responses to his letters to the complainant, or either of them, and if so, to produce the responses. He answered:

"I did not; my letters to him were addressed to him at Baltimore, as indicated by his card, and put in the post office."—(p. 26, R.)

He was then asked as follows:

"If you received responses to similar letters addressed to any other person, or persons, please state from whom such responses were received, and produce them if you have them?"

Answer: "I received a response from the Warren Roofing Company, of Boston or New York, making certain inquiries in relation to the probable amount of tar manufactured, the facilities for its removal, and the last day that propositions would be received; to which I replied, and the result of that correspondence was the two propositions herewith submitted, one dated at New York, May 31st, by telegraph, and the other dated at Boston, May 30th, by mail, both of which were received on the 31st."

The two propositions referred to by the witness in his last answer as therewith submitted, are in evidence, and are respectively marked Exhibit G and Exhibit H. And they are, respectively, as follows:

Exhibit G, (p. 27, R.)

"Dated New York, May 31, 1864. Received Washington, May 31, 1864.

"To. J. F. BROWN, *Sec. Wash. Gas-light Co.*

"We will give sixty-five cents per ton of coal carbonized.

(Signed) "WARREN ROOFING COMPANY,
"*St. John Street.*"

Exhibit H, (p. 27., R.)

"BOSTON, *May* 30, 1864.

"J. F. BROWN, Esq., *Sec. Washington Gas-light Co.*

"DEAR SIR: We make you an offer of (65) sixty-five cents per ton of coal carbonized for what coal tar you make for the year from June 1, 1864, to June 1, 1865.

(Signed) "Yours truly,
"WARREN ROOFING COMPANY.
"NATH'L MARTAN, *Treas.*"

The witness was asked as follows:

"State, if you please, whether at any time before the 1st of June, 1864, Mr. H. C. Wilson left with you a proposition, in writing, to lay before the board of directors, for the purchase of gas-tar from said company by said Wilson after the 1st of June, 1864, and also requested you, in his behalf, to submit the same to the board?"—(p. 28, R.)

He answered thus:

"Mr. Wilson did leave such a proposition with me during the day of the 31st of May, and requested me to lay it before the board at the next meeting. This is the proposition."

The proposition here referred to by the witness is in evidence, and is marked Exhibit I, (p. 28, R.,) and is as follows:

"WASHINGTON, *May* 31, 1864.

"Mr. J. F. BROWN, *Sec. in charge Wash. Gas-light Co.*

"I propose to purchase the tar made at your works for one year at sixty-five cents per ton of coal carbonized.

(Signed) "Yours respectfully,
"H. C. WILSON."

Witness was further asked with respect to said proposition as follows:

"State, if you please, whether this writing is wholly in the handwriting of H. C. Wilson, or whether any portion of it, either in words or figures, is in the handwriting of any other person?"

He answered:

"The body of this proposition and signature I believe to be in the handwriting of H. C. Wilson. The figures 65 are in my handwriting."—(p. 28, R.)

Witness was then asked as follows:

"State for what reason, under what circumstances, and under what direction these figures were in your handwriting?"—(p. 29, R.)

Answer:

"Mr. Wilson said that there would be some high prices named by persons who were his enemies, particularly the Warren Roofing Company, who were determined to break him down and get the contract at any price, even if the tar, as was the case at Williamsburg, was allowed to run in the river during the whole year; that he must have the tar, and rather than lose it, would pay the highest price named by any one. I did not regard this transaction as a secret one in the shape of sealed proposals, and therefore showed Mr. Wilson the telegram which I had then received. He stated that other propositions might come in before the close of the day, and he left his proposition in blank, requesting me to fill it with the highest price that might be named, stating that sixty-five cents was more than he could afford to pay, and he hoped that, under all the circumstances, the board of directors would award him the contract at the Baltimore price, forty cents per ton of coal carbonized; but that he must have the tar, and he would trust to the liberality of the board of directors, when the company got relief from Congress, to reduce the price to forty cents, going back to the 1st of June, 1864, the expiration of his contract. I waited until the receipt of letters by the evening mail, when I got the letter from Boston, which I opened, and found to name the same price as the telegram which I had shown to Mr. Wilson. I then, in obedience to his

request, filled the blank in his proposition with sixty-five cents. The next morning Mr. Wilson called at my house before breakfast and inquired what other propositions had been received. I told him of the letter from Boston naming the same price as the telegram, and that I had filled in his proposition at that price before leaving the office the day before. He said, 'it is too much. I cannot make any money at that rate. I ought to have it at the Baltimore price; but I must stand it until your company gets relief from Congress. As this is the last day that I am entitled to tar under my contract, and your board of directors will not meet for some time, what is to become of the tar in the meantime?' I answered that as his bid was as much as the others, I was satisfied the board would award him the contract rather than give it to a stranger at the same price, and that he could continue to receive the tar after this day until the board should award the contract, when it would go back and cover the tar made after this day; in other words, it was understood that the new contract had been given to him from that day, although it had to go through the form of being approved by the board of directors. He said that 'was entirely satisfactory, and he would go on receiving the tar, and pay for it when required at the rate of sixty-five cents per ton of coal carbonized, if the board required it?' On the last day of June, 1864, the board of directors met. I submitted the three papers marked Exhibits G, H, and I, urging the board to award the contract to Mr. Wilson, as his bid was as high as the others. This was done, and I notified Mr. Wilson on the first day of July accordingly. Here is a copy of my said notification."

The copy of the notification here referred to, and produced by the witness, is marked Exhibit K, (p. 30, R,) and is as follows (p. 30, R.):

"OFFICE OF THE WASHINGTON GAS-LIGHT COMPANY,
"No. 483 Tenth street west.
"WASHINGTON CITY, *July* 1, 1864.

"H. C. WILSON, Esq., *Washington, D. C.*

"SIR: I am instructed to inform you that the board of directors of this company have awarded you the contract for our tar for two years from June 1, 1864, at sixty-five

cents for each ton of coal carbonized, payable monthly, conditioned only upon the closing of the gas-works during that period.

(Signed,) "Truly, &c.,

"J. F. BROWN,

"*Sec. in charge.*"

Continuing his answer, the witness added as follows:

"That letter was put in the post office, and Mr. Wilson called a few days after, and thanked me for having procured him the contract, and said 'that the price was too high, and I must try to get it down to the Baltimore rates.' I called his attention to the award being for two years, when his bid was but for one. He said 'that made no difference, for if he could stand it one year he could stand it two, and he expected the board would give him relief long before the one year was out.' I then asked him if I should now *return to him the* $500 required under the old contract, in the event of the company refusing to renew it. He said '*no*, that can be credited in my account at our next settlement,' to which I assented."—(p. 30, R.)

Further, this witness was asked as follows: "How long did Mr. Wilson continue to receive tar from the Gas Company under the award of which you have just spoken?" —(p. 30, R.)

Answer. "From the 1st of June, 1864, until about the 25th of December of that year."

Eleventh interrogatory. "Did you render to Mr. H. C. Wilson an account, at any time, for the gas-tar received by him after the 1st of June, 1864?"

Answer. "I did; and now present a copy of said account."

The copy of the account here referred to and produced by the witness, is marked Exhibit L, and will be found at page 31 of the record. The copy, produced by the witness, shows two credits in the account rendered to Wilson, one of $500 and the other of $250, and the witness was asked to state why the credit of $500 had been carried into this account? And he answered thus:

"That was the drawback to be allowed under the old contract, if the company refused to renew it, according to the understanding with Mr. Wilson. The second credit of $250 was the amount paid to the cashier, Mr. Hall, on the 21st day of December, 1864."

And, after first explaining why he had not rendered an earlier account, than the one of which he had produced a copy, to Mr. Wilson for the gas-tar furnished him after June 1, 1864, the witness (Brown) adds as follows:

"On the 23d of December, Mr. Hall mentioned to me that Mr. Wilson had paid him $250 on account of tar, and I said, 'why $250? he owes $4,000 or $5,000.' He answered, 'I don't know. I signed the receipt for $250 that Mr. Charles Wilson brought or wrote.' I then told him that he must immediately go and hunt up Mr. Charles Wilson and get that receipt, and let me see what it was. He went, and was gone nearly, if not quite, all the remainder of the day, before he found him. I did not see him until the next morning (the 24th) at the office, when he told me that Mr. Charles Wilson had said that the old contract was renewed, and that this payment of $250 was for the six months' tar. I immediately made out the account, a copy of which I have here presented, and directed the superintendent to stop the delivery of the tar. The secretary or the president of the company was the proper person to receive the money for the gas-tar, the president being treasurer at that time. It was no part of the cashier's duties to receive said moneys, or any other moneys, except for gas and service bills."—(p. 32, R.)

Appreciating, apparently, the importance of this testimony of Joseph F. Brown, and seeing how clearly and unmistakably it proved that the contract of May 18, 1859, had not been renewed, and that in lieu of it another and a very different contract had been made by H. C. Wilson and the defendant; and knowing, doubtless, how fatal such testimony would prove to his own pretensions in this case, unless he could break its force by impugning the veracity of the witness, (Brown,) the complainant recalled his own witness, Henry C. Wilson, and, in his re-

butting testimony, this obliging witness (H. C. Wilson) fully justified the confidence which the complainant reposed in him when he recalled him; for he promptly and unequivocally denied what appeared to be the damaging points to the complainant's pretensions in Brown's testimony; or, in other words, he unhesitatingly denied all the hurtful sayings and doings laid to his charge in Brown's testimony.—(p. 46, R.) He even denied, among other things, that he had ever said to Brown, that he (H. C. Wilson) would pay for the gas-tar furnished him after June 1, 1864, "at the rate of sixty-five cents per ton of coal carbonized."—(p. 46, R.) Fortunately for the cause of truth, as well as for Brown's reputation, the testimony of Brown is supported (if it required any support) by the testimony of Samuel L. Brick, who, according to his own testimony, is an "engineer by profession, and consulting engineer for several gas-works, and president of the Richmond County Gas Company, Staten Island, New York." (p. 39, R.) Mr. Brick testifies that, in a conversation with Henry C. Wilson, in Philadelphia, previous to the 8th day of November, 1864, and on being told by Wilson in that conversation that he had made $40,000 in the last year, or in the last one or two years, he asked Wilson "what he had been engaged in?" And, in reply, Wilson said that, "inasmuch as he had a monopoly of the tar at the Washington Gas Works, that he had the contract for putting on all the roofs for the various buildings for the government throughout the city." Mr. Brick adds, that "this conversation, advanced by himself, (Wilson,) brought up the subject of the tar contract at the Washington Gas Works. He (Wilson) then said to me (Brick) that, as *his old contract had expired with said company*, he *was obliged to make a new one*, and as those fellows in Boston were determined to monopolize the whole trade, and that he could give as much as they could, and if they *could give sixty-five cents per ton for coal carbonized*, that he could, although it run up to a pretty round sum

in the aggregate; and *that it would now, under his new contract, amount to some* $12,000 *or* $14,000 *per year, according to the number of tons used.*"—(p. 40, R.) It will be noticed that the conversation with Wilson, to which the witness (Brick) has testified, occurred previous to the 6th of November, 1864, and, therefore, previous also to any negotiations between the complainant and Wilson for the purchase and sale of *any* tar contract. The complainant, apparently, did not like the testimony of Brick any better than the testimony of Brown, and therefore he called on his witness (H. C. Wilson) to rebut that also, and he (Wilson) readily responded to the call, and, without doubt, fully met the expectation of the complainant, by disposing of the witness, Brick, in the same way that he disposed of the witness Brown, that is by positively denying his testimony.—(p. 45, R.)

To return for a moment to Brown's testimony: there is one fact in it which escaped H. C. Wilson's denial. But he was not asked to deny it. It is this: Brown testifies that "no one ever applied to the Gas Company specifically for a renewal of the contract" of May 18, 1859.—(p. 26, R.) And the truth of this testimony is not only not denied, but is indirectly admitted by H. C. Wilson; for, as already shown, he has testified that he "never said anything to the president, or any other officer of the company, about renewing that contract.—(p. 22, R.) Why did not Mr. H. C. Wilson say anything to anybody about renewing that contract? Was it because he did not wish to purchase any more gas-tar after the expiration of that contract? Clearly not. For Brown's testimony shows, on the contrary, that Wilson was most anxious to continue his purchases of gas-tar after the 1st of June, 1864. And Brown's testimony on this point, if it needed any corroboration, is fully corroborated by the testimony of A. G. Hall, who, in answer to the first interrogatory addressed to him, (p. 23, R.,) testified, among other things, as follows:

"Mr. Henry C. Wilson used to come in there (*i. e.*, in the gas office) from time to time and say, 'Now, old fellow, I want you to do all you can to help me get the tar; I must have it; if I don't I am ruined,' or words to that effect. He said if he got it *at that price* he did not expect to make anything; but he did not want any one else to get it. He used to talk that way, and wanted me to use what influence I could with Mr. Brown so that he could get the tar. I cannot remember the exact time that those conversations took place—about a year ago, I think."—(pp. 23, 24, R.)

Some other reason than the one just suggested must be resorted to to account for H. C. Wilson's forbearance to ask a renewal of the contract of May 18, 1859, and, by the light of Brown's testimony, there is no difficulty in discovering the true reason of that forbearance; it was, doubtless, because Wilson knew it would be useless to ask a renewal of that contract, for he had been told by Brown, as Brown has testified, "as far back as the month of February, 1864, that under no circumstances would that contract be renewed."

There is yet another important fact established by the testimony of the witness, Brown, which is not denied, but is admitted, in the testimony of the witness H. C. Wilson. It is this: The witness, Brown, testifies, as already said, that under date *of July* 1, 1864, he, by direction of the defendant's board of directors, addressed a note to said H. C. Wilson, informing him that said board of directors had awarded him (Wilson) the contract for said defendant's gas-tar "for two years from June 1, 1864, *at sixty-five cents for each ton of coal carbonized*, payable monthly," &c.—(A copy of said note, marked Exhibit K, will be found on p. 30, R.)

The significance and force of this piece of evidence possibly escaped the attention of the witness, H. C. Wilson, for, in his rebutting evidence, he testified as follows:

"Looking at Exhibit K, I cannot verify it to be a literal copy of the original letter which I received, and which,

with another written at the same time by Mr. Brown to me, is now in the possession of Joseph H. Bradley, Esq., as my counsel. These papers were left at my house during my absence in New York, and *were handed to me on my return home.* * * I believe the original of said Exhibit K contained the words 'payable monthly;' but I have no distinct recollection of it."—(pp. 45, 46, R.)

It is submitted that this note of July 1, 1864, addressed by order of the defendant's board of directors to H. C. Wilson, and constituting, as it does, a part of the *res gestæ*, together with the admitted reception of it by said H. C. Wilson, without objection, and without any inquiry on his part as to why it had been written, establishes the truthfulness of Brown's testimony, and shows unquestionably, and beyond all reasonable doubt, that H. C. Wilson, after the 1st of June, and until December 1, 1864, received the gas-tar of the defendant under his contract to pay for it at the rate of "sixty-five cents for each ton of coal carbonized," and, therefore, that he did not receive it for said period under any renewal, express or implied, of the contract of May 18, 1859.

And upon this review of the evidence, it is further respectfully submitted on the part of the appellee, that there is no error in the decree below, and that the same should be affirmed with costs.

KENNEDY & WEBB,
Counsel for Appellee.